



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 247, and 252

[Docket DARS-2018-0040]

RIN 0750-AJ94

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Transportation of Supplies by Sea" (DFARS Case 2018-D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause, in order to streamline the instructions to contractors subject to both of these clauses.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]** .

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 42846 on August 24, 2018, to modify DFARS clause 252.247-7023, Transportation of Supplies by Sea, to include the instructions currently specified in DFARS clause 252.247-7024, Notification of Supplies by Sea, and then remove DFARS clause 252.247-7024 from the DFARS. No public comments were received in response to the proposed rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, including Commercially Available Off-The-Shelf Items

This rule does not create any new provisions or clauses or impose any new requirements. The rule merely consolidates existing instructions regarding notifications of transportation of supplies by sea into a single DFARS clause, 252.247-7023, which will continue to apply to contracts for commercial and commercially available Off-the-shelf items, as well as contracts at or below the simplified acquisition threshold.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and

safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

DoD is amending DFARS clause 252.247-7023, Transportation of Supplies by Sea, to include the instructions currently specified in DFARS clause 252.247-7024, Notification of Supplies by Sea, and then removing DFARS clause 252.247-7024 from the DFARS. The objective of this rule is to streamline the instructions to contractors pertaining to the transportation of supplies by sea. The combination of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force.

No public comments were received in response to the initial regulatory flexibility analysis.

Based on fiscal year 2016 data from the Federal Procurement Data System, the Government issued approximately 83,000 contract actions that included DFARS clause 252.247-7023. Of the 83,000 contract actions, approximately 39,000 awards were made to 15,000 unique small businesses entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

There are no known significant alternative approaches to the rule that would meet the proposed objectives.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0245, titled: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation and Related Clauses.

List of Subjects in 48 CFR Parts 212, 247, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 247, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 212, 247, and 252 continues to read as follows:

Authority 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212 ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

2. Amend section 212.301 by:

- a. Removing paragraph (f) (xix) (D);
- b. Redesignating paragraphs (f) (xix) (E) through (H) as paragraphs (f) (xix) (D) through (G), respectively;
- c. In the newly redesignated paragraph (f) (xix) (D), removing "247.574(d)" and adding "247.574(c)" in its place;
- d. In the newly redesignated paragraph (f) (xix) (E), removing "247.574(e)" and adding "247.574(d)" in its place;
- e. In the newly redesignated paragraph (f) (xix) (F), removing "247.574(f)" and adding "247.574(e)" in its place; and
- f. In the newly redesignated paragraph (f) (xix) (G), removing "U.S" and adding "U.S." in its place.

PART 247 TRANSPORTATION

247.574 [Amended]

3. Amend section 247.574 by:

- a. Removing paragraph (c); and

b. Redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively.

PART 252 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 252.247-7023 by:

a. In the clause heading, removing the date "(APR 2014)" and adding "(FEB 2019)" in its place;

b. Redesignating paragraph (h) as paragraph (i);

c. Adding a new paragraph (h); and

d. In the newly redesignated paragraphs (i)(1) and (2), removing "paragraph (h)" and adding "paragraph (i)" in both places;

e. In Alternate I:

i. In the clause heading, removing the date of "(APR 2014)" and adding "(FEB 2019)" in its place;

ii. Redesignating paragraph (h) as paragraph (i);

iii. In the newly redesignated paragraphs (i)(1) and (2), removing "paragraph (h)" and adding "paragraph (i)" in both places; and

iv. Adding a new paragraph (h).

f. In Alternate II—

i. In the clause heading, removing the date of "(APR 2014)" and adding "(FEB 2019)" in its place;

ii. Redesignating paragraph (h) as paragraph (i);

iii. In the newly redesignated paragraphs (i)(1) and (2), removing "paragraph (h)" and adding "paragraph (i)" in both places; and

iv. Adding a new paragraph (h).

The additions read as follows:

252.247-7023 Transportation of Supplies by Sea.

* * * * *

(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of this clause.

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Alternate I. * * *

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(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract,

the Contractor learns that supplies will be transported by sea,
the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and
conditions of this clause.

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Alternate II. * * *

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(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies, but the contractor learns after the award of the contract that supplies will be transported by sea, the Contractor shall notify the Contracting Officer of that fact.

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252.247-7024 [Removed and Reserved]

4. Remove and reserve section 252.247-7024.

252.247-7025 [Amended]

5. Amend section 252.247-7025, in the introductory text, by removing "247.574(d)" and adding "247.574(c)" in its place.

252.247-7026 [Amended]

6. Amend section 252.247-7026, in the introductory text, by removing "247.574(e)" and adding "247.574(d)" in its place.

252.247-7027 [Amended]

7. Amend section 252.247-7027, in the introductory text, by removing "247.574(f)" and adding "247.574(e)" in its place.

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